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CHARLES ELMORE

Supreme Court of the United States

October Term, 1949

No. 447

LAND O'LAKES DAIRY COMPANY,
Appellant,

vs.

COUNTY OF WADENA and STATE OF MINNESOTA,
Appellees

APPEAL FROM THE SUPREME COURT OF MINNESOTA

PETITION FOR REHEARING

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now the Appellant and makes petition to the Court for Rehearing on the grounds hereinafter stated:

NATURE OF THE CASE

This petition for rehearing is addressed to the order of the Court dated December 12, 1949, affirming *Per Curiam* two judgments of the Supreme Court of the State of Minnesota upholding the application of that State's general property tax statutes (real and personal) upon Appellant's interest in property beneficially owned (Appellant contends) by the United States.

The property involved was a milk dehydration plant (land, buildings and machinery) which had been conveyed to the Government by a deed which contained a clause that AFTER the President of the United States had declared the property surplus, title would revert to Appellant *if* it paid to the Government a specified sum. Appellant occupied the property under a lease from the Government. When the taxes were assessed, the President had not declared the property surplus, and it could not be foretold when, if ever, he would do so.

The *Per Curiam* order of this Court reads as follows:

> "*PER CURIAM:* The motion to affirm is granted and the judgment is affirmed. *S. R. A., Inc. v. Minnesota,* 327 U. S. 558; *Oklahoma Tax Commn. v. Texas Co.,* 336 U. S. 342."

The affirmance was on the Statement as to Jurisdiction.

GROUND FOR REHEARING

Appellant respectfully submits that the language of the *Per Curiam* order shows that this Court *misunderstood* the nature of the case and of the issues involved. It is the opinion of Appellant's counsel that this Court was mistaken in its apparent view that the cases cited in its *Per Curiam* order

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had determined those issues. The misunderstanding must be attributed to failure of Appellant to fully and clearly analyze and explain the issues in its Statement as to Jurisdiction.

The issue in this case is whether Minnesota can in effect tax the Government's beneficial interest in the property by the device of putting the whole tax on Appellant's interest as lessee of the property.

The case of *S. R. A., Inc. v. Minnesota*, 327 U. S. 558, cited in the Court's *Per Curiam* order, held that where the taxpayer was admittedly the complete equitable owner of the property the whole tax could be put on such ownership. That is not the issue in this case. Here the Government held the equitable title, a fact apparent on the face of the Government's deed,—the Minnesota Court's opinion to the contrary. Appellant could not get back the property regardless of how long the lease continued, or by any action it might take, unless and until the President had declared the property surplus. That is one of several elements of the transaction which demonstrate that the Government's interest was more than merely a security interest. The extent of the Government's interest derived from the conveyance of the property to it raises a substantial Federal question which Appellant seeks to have reviewed.

The only other case cited in this Court's *Per Curiam* order is *Oklahoma Tax Commission v. Texas Company*, 336 U. S. 342. That upheld a tax which this Court found to be levied upon, and measured by, only the operations and interest of a private lessee and from which there was carefully excluded the interest of the United States (or its wards, the Indians). In the instant case, the tax was levied upon the whole value of the property, with no deduction or exclusion for the in-

terest of the United States (which Appellant contends was the primary beneficial interest). In other words Minnesota is here in effect taxing the government's beneficial interest by loading that tax upon the lessee.

The case of *U. S. v. Allegheny County*, 332 U. S. 174, not cited in this Court's *Per Curiam* order, is the controlling case. This Court in that case (1) held that it reserved to itself the right to determine the nature of the Government's interest (thus the opinion of the Minnesota court on that question does not answer it here, that question itself being a Federal question); and (2) struck down the tax involved which was imposed on the private corporation's property, because it included the Goverment's interest. The *Allegheny* case remains law and that decision has not been overruled, modified, or criticized.

In both the *S. R. A.* and *Oklahoma* cases, particular emphasis was placed upon the fact that the taxes involved were *nondiscriminatory* in character. Here Minnesota has applied its general property taxes upon Appellant's leasehold interest equal in amount to that which in other instances involving like property is imposed upon outright ownership. Such application of the State's general property taxes operates as a discrimination against appellant and against a transaction with the Government.

Furthermore, the *S. R. A.* and *Oklahoma* cases raised only the question of Federal immunity to State taxation. The present case raises that issue and in addition raises the issue of the violation of Appellant's rights under the Fourteenth Amendment (pages 8 and 14 of Appellant's statement of jurisdiction). It is submitted that to exact from Appellant a tax upon its property based not upon its own

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interest in the property or the value thereof but based also upon the beneficial interest of the Government and the value of that interest is clearly to take Appellant's property without due process of law and to deny to it the equal protection of the laws.

IMPORTANCE OF THE CASE

The type of conveyance taken by the Government in this instance conformed to a pattern used by the Government in the acquisition of properties of all descriptions throughout the nation. Whether states may use the interest of the United States acquired by such conveyances to tax or to enhance the tax upon the Government's lessees is a question of national importance.

SUMMARY

Appellant prays that this Court grant rehearing, vacate its order of affirmance and note jurisdiction of the appeal for the following reasons:

1. This Court by its *Per Curiam* order mistakenly affirmed the judgments on a ground not applicable here.

2. Substantial Federal questions are involved which were disposed of by this Court's *Per Curiam* order, which should

not be foreclosed without opportunity for full presentation and discussion on their merits.

Respectfully submitted,

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Saint Paul, Minnesota,
Of Counsel.

CERTIFICATE OF COUNSEL

Michael J. Doherty, one of the counsel for the Appellant, does hereby certify that the foregoing petition is presented in good faith and not for delay.

MICHAEL J. DOHERTY